Office Supreme Court, U.S.
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AUG 9 1963
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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 270

EDYTHE C. UROW, Administratrix of the Estate of Louis Urow, deceased, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

CHESTER H. GRAY,
Corporation Counsel, D.C.

MILTON D. KORMAN,
Principal Assistant Corporation Counsel, D.C.

HUBERT B. PAIR,
Assistant Corporation Counsel, D.C.
Attorneys for Respondent,
District Building,
Washington 4, D.C.

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INDEX

Subject Index

	Page
Question Presented	1
Statement of the Case	2
Reasons Why the Writ Should Be Denied	
The decision of the court below is not in conflict with any applicable decision of this Court	2
Conclusion	6

Cases Cited

District of Columbia v. *Woodbury* (1890), 136 U. S. 472	3, 5
Barnes v. *District of Columbia* (1875), 91 U. S. 540	3, 5
Hammett v. *City of Albuquerque* (1958), 63 N. M. 374, 320 P. 2d 384	4
Wrightman v. *Washington* (1861), 1 Black (66 U. S.) 39	3, 5
Wolff v. *District of Columbia* (1905), 196 U. S. 152, 157	5

Other Authorities Cited

American Law Reports

Vol. 161, p. 1404 et seq. (1946) 4

Vol. 92, p. 1495 et seq. (1934) 5

Blashfield, *Cyclopedia of Automobile Laws and Practice*

Vol. 63, § 782, pp. 91-92, nn. 39-41 (1950) 5

Corpus Juris Secundum, *Municipal Corporations*,

Vol. 5A, § 3191, p. 194, n. 8 (1954) 5

McQuillan, *Municipal Corporations*, 3d Ed.

Vol. 18, § 53.42 (1950) 5

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DISTRICT OF COLUMBIA, *Respondent*.

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BRIEF FOR RESPONDENT IN OPPOSITION

QUESTION PRESENTED

Is the decision of the court below, that respondent may not be held civilly liable for failure, in the exercise of legislative discretion, to provide traffic control devices at a particular street intersection, contrary to decisions of this Court that respondent may be civilly liable for failure, after notice, to correct physical defects or remove unlawful obstructions which render its streets unsafe for travel?

STATEMENT OF THE CASE

Petitioner's decedent, while crossing a heavily-trafficked street in the District of Columbia at an intersection which had not been provided with traffic control devices, was struck and killed by an automobile (R. 2).

Alleging that her decedent's death was caused by respondent's negligence in failing to provide traffic control devices at the intersection and that such failure constituted a violation of respondent's duty to maintain its streets in a reasonably safe condition, petitioner brought a wrongful death action against respondent in the United States District Court for the District of Columbia (R. 2).

Upon motion of respondent, the complaint was dismissed for failure to state a claim against it upon which relief could be granted (R. 6). In affirming, the court below held that the establishment by the Commissioners of the District of Columbia of a general traffic control plan "* * * is essentially legislative in character and is the result of the Commissioners' exercise of discretion and judgment;" that respondent "* * * cannot be held liable when the alleged negligence involved would require a jury to examine the reasonableness of this sort of discretionary quasi-legislative determination made by the Commisisoners pursuant to authority vested in them by Congress;" and that petitioner's complaint did not allege "* * * a claim for relief within the exception to the rule of municipal immunity with regard to the obligation to keep streets in a safe condition after being put on notice of a defect" (R. 8).

REASONS WHY THE WRIT SHOULD BE DENIED

The decision of the court below is not in conflict with any applicable decision of this Court.

Petitioner asserts, as her sole ground for certiorari, that the rejection by the court below of her contention "* * *

that her complaint alleges a claim for relief within the exception to the general rule of municipal immunity with regard to the obligation to keep streets in a safe condition after being put on notice of a defect" is in conflict with this Court's decisions in *District of Columbia* v. *Woodbury*, 136 U. S. 472 (1890), and in the earlier cases of *Weightman* v. *Washington*, 1 Black (66 U. S.) 39 (1861), and *Barnes* v. *District of Columbia*, 91 U. S. 540 (1875), followed in *Woodbury*. But, as will be hereinafter demonstrated, plainly it is not.

Woodbury involved a negligence action against the District of Columbia to recover damages for personal injuries resulting from a fall caused by stepping into a hole in a public sidewalk. The principal question before this Court was "... whether the District of Columbia is, under any circumstances, liable in damages for personal injuries resulting from the unsafe condition of the avenues, streets and sidewalks in the City of Washington." In deciding this question, the Court rejected the contention of the District of Columbia that it was not its duty, but rather that of the United States, to maintain the city's streets, and held, in accord with *Weightman* v. *Washington*, *supra*, and *Barnes* v. *District of Columbia*, *supra*, that the District of Columbia is under a duty, similar to that of other municipal corporations, to exercise reasonable care to maintain the city's streets in a reasonably safe condition and that, for a dereliction of that duty, it may, under certain circumstances, be required to respond in damages.

The rule enunciated by this Court in *Woodbury* respecting respondent's liability for failure, after notice, to correct physical defects or to remove unlawful obstructions which render its streets unsafe for travel is that which prevails generally throughout the nation. The courts of the great majority of the States have held, as did the court below in the instant case, that "the decision to repair a street after

the city has been put on notice is a ministerial as distinguished from a discretionary function."

But such courts have almost uniformly rejected the proposition for which petitioner here contends, that a municipality may be held liable for failure to provide traffic control devices at a particular street intersection on the theory that such failure renders the street unsafe for travel and thereby violates the municipality's duty to maintain its streets in a reasonably safe condition.

Illustrative of such holdings is *Hampiell v. City of Albuquerque*, 63 N. M. 374, 320 P. 2d 384 (1958), a negligence action against the city for failure to install a stop sign at a street intersection. There the court, in rejecting a contention similar to that here urged by petitioner, held:

> "We are of opinion that the action cannot be maintain on the theory, recognized as giving rise to municipal liability, of a failure to use reasonable care in the maintenance of its streets. * * *
>
> "To construct and maintain its streets in a safe condition is a corporate duty, and a municipality is under a legal duty to keep its streets and sidewalks in a reasonably safe condition for the use of the public, and for the negligent failure to perform this duty it is liable in tort to a person thereby injured. * * * But the manner in which the streets should be used and the installation of stop signs or electrical control systems calls for the exercise of municipal discretion, a governmental function, for which a municipality cannot be called to account respecting its employment of such power. * * *"

In support of its holding, the court cited cases from Alabama, Florida, Kentucky, Louisiana, Missouri, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Tennessee, Texas and Washington.

And see also the many cases to the same effect collected in the annotations in 92 A. L. R. 1495 et seq. (1934) and 161 A. L. R. 1404 et seq. (1946); 18 McQuillan, *Municipal*

Corporations, 3d Ed., § 53.42 (1950); 63 C. J. S., *Municipal Corporations*, § 782, pp. 91-92, nn. 39-41 (1950); 5A Blashfield, *Cyclopedia of Automobile Law and Practice*, § 3191, p. 194, n. 8 (1954).

Blashfield, in the section just cited, succinctly sums up the rule declared by the authorities as follows:

> "Defects or obstructions in streets, which will render the municipality liable, must be physical and not mere negligence in performing a governmental function, rendering travel unsafe, such as negligently maintaining a stop and go light system, which has nothing to do with physical imperfections of the street."

It is thus clear that the decision of the court below is unquestionably in strict accord with the overwhelming weight of authority throughout the country, a fact which petitioner, at least tacitly, admits, for she cites no authority nor makes any assertion to the contrary.

Petitioner argues, nevertheless, that *Woodbury* v. *District of Columbia*, *supra*, *Weightman* v. *Washington*, *supra*, and *Barnes* v. *District of Columbia*, *supra*, compel an exactly opposite holding. But no question such as that here involved was presented in any of these cases. *Barnes* involved "a deep pit or excavation" in a street; *Weightman* a defective bridge; and *Woodbury* a hole in a sidewalk. All these were clearly *physical* defects in the street, bridge, or sidewalk and, admittedly, no *physical* defect or obstruction of any kind is here involved. It follows that these decisions in no way control the instant case, for, as petitioner points out in her brief (p. 6), "* * * under our system of jurisprudence a decision settles no more than the impact of the actual facts presented * * *." And manifestly the facts here presented are entirely different from those presented in *Barnes*, in *Weightman*, or in *Woodbury*. Cf. *Wight* v. *District of Columbia*, 196 U. S. 152, 157 (1905).

What petitioner is really asking this Court to do, as her lengthy argument regarding the "logic" of the decision below clearly demonstrates, is to decide, for the first time and in a manner contrary to the well-nigh universal weight of authority, a matter of *purely local application* which, after careful consideration, has been resolved by the United States Court of Appeals for the District of Columbia Circuit, highest court of the jurisdiction.

CONCLUSION

Since, as demonstrated, the decision of the court below is manifestly not in conflict with any applicable decision of this Court, it is respectfully submitted that the petition for a writ of certiorari should be denied.

CHESTER H. GRAY,
Corporation Counsel, D.C.

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Principal Assistant Corporation Counsel, D.C.

HUBERT B. PAIR,
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Attorneys for Respondent.
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